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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,731	03/22/2005	Mirko Appel	2002P15759WOUS	8587

7590 01/27/2010  
Siemens Corporation  
Intellectual Property Departement  
170 Wood Avenue South  
Iselin, NJ 08830

EXAMINER
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LABBEES, EDNY

ART UNIT	PAPER NUMBER
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2612

MAIL DATE	DELIVERY MODE
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01/27/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/528,731	<b>Applicant(s)</b> APPEL ET AL.	
	<b>Examiner</b> EDNY LABBEES	<b>Art Unit</b> 2612	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 November 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☒ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Status of Claims*

1. In the response filed on 11/04/2009, claims 12-22 stands and are currently pending in the application.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 12-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Torch (US 6,42,081).

Regarding Claim 12, Torch discloses *System And Method For Monitoring Eye Movement* that has the following claimed limitations:

Claimed monitoring a technical installation comprising using a sensor to acquire a physiological reaction of a human during an inspection tour of a portion of the technical installation is met by the system of Torch comprising a detection device (30) for detecting eyelid movement of an individual, wherein the detection device (30) is attachable to a conventional pair of eyeglasses (20) (see Col. 6 Ins 38-67). The detection device (30) may be used to detect impending drowsiness of a user (See Col. 10 Ins 46-55);

Claimed using an assessment tool to record reaction information acquired with the sensor and analyzing information recorded with the assessment tool to diagnose operational condition of a component of the technical installation is met by the system of Torch wherein the detection device (30) comprises a memory circuitry that stores streams of data for subsequent retrieval and analysis (see Col. 8 Ins 52-63). The detection device is used to detect impending drowsiness of an individual with the processing box (130) of the system to monitor the equipment of the onset of drowsiness. Thus the detection device (30) may be used to monitor operators of heavy equipment or factory machinery and control the equipment (see Col. 9 Ins 23-32, Col. 10 Ins 46-55), Col. 11 Ins 1-20 and Col. 12 Ins 59-65).

The system of Torch does not specifically state “technical installation”. Rather, the system of Torch discloses a system for monitoring equipment. It would have been obvious to one of ordinary skill in the art to have readily recognized that the monitoring and controlling of the equipments can be implemented in a technical installation.

Regarding Claim 13, Torch discloses a system wherein the stream of data may be displayed along with other physiological data (e.g. heart rate, respiratory rate, other sleep polysomnographic [PSG] or electroencephalographic [EEG] variables) (see Col. 9 Ins5-22).

Regarding Claim 14, Torch discloses a system wherein a camera on the frame monitors movement of the eye relative to the reference frame (see abstract).

Regarding Claim 15, the claim is interpreted and rejected as claims 1 stated above. The user wears a frame on their head and the person's eyes are monitored (see abstract).

Regarding Claim 16, Torch discloses a system wherein the detection device (30) and system (14) may be used to in a medical diagnostic, therapeutic, research or professional setting to monitor the wakefulness, sleep patterns and/or the effects of drugs, which may affect blink rate, blink velocity, blink duration, or PERCLOS of a patient or vehicle operator. The CPU produces stream of data which the transmitter may send to a remote receiving and processing unit, which may store the stream of data in the memory circuitry for later retrieval and analysis by researchers, medical professional and safety personnel (See Col. 11 Ins 21-40). Although the system of Torch does not specifically state that a database represents a history of human's physiological reaction, one ordinary skilled artisan would have readily recognize since the memory circuitry is used for later retrieval and analysis by researchers, a history of the individual is always stored.

Regarding Claim 17, the claim is interpreted and rejected as claim 12 stated above.

Regarding Claim 18, the claim is interpreted and rejected as 12 stated above.

Regarding Claim 19, the claim is interpreted and rejected as claim 13 stated above.

Regarding Claim 20, the claim is interpreted and rejected as claim 14 stated above.

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Regarding Claim 21, the claim is interpreted and rejected as claim 16 stated above.

Regarding Claim 22, the claim is interpreted and rejected as claim 17 stated above.

### ***Response to Arguments***

4. In the remarks filed 11/04/2009, applicant presents the following arguments:

1) Arguments regarding Claims 12 and 18, applicant argues that the Torch reference does not teach or suggest acquiring “physiological reaction of a human during an inspection tour or a portion of the technical installation” and analyzing recorded information “to diagnose an operational condition of a component of the technical installation.”

5. **RESPONSE**

2) Response to arguments regarding Claims 12 and 18, Examiner respectfully disagree with applicant’s assertion that the Torch reference do not teach or suggest the claimed limitation. As stated above, Torch discloses a system wherein the detection device (30) is coupled to the equipment being used. Data regarding physiological information, such as heart rate, respiratory rate, other sleep polysomnographic (PSG) or electroencephalographic (EEG) are used to monitor the attentiveness of the driver or

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machine operator. Based on the response of the operator, the pieces of machinery or equipment are controlled (see Col. 9 Ins 23-33). In addition, examiner acknowledges that the system of Torch does not specifically disclose "technical installment." However, technical installment alludes to areas where equipment is used, such as a compound. Therefore, it would have been obvious to one of ordinary skill in the art to have readily recognized that the information regarding the operator and the equipment which can be part of the technical installment or the compound. Therefore, the arguments presented are not persuasive and the rejection to claims 12 and 18 stands.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to EDNY LABBEES whose telephone number is (571)272-2793. The examiner can normally be reached on M-F: 7:00 - 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Davetta W. Goins can be reached on (571)272-2957. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Edny Labbees  
1/20/2010

/Davetta W. Goins/  
Primary Examiner, Art Unit 2612